

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1365 of 1998

in

SPECIAL CIVIL APPLICATION NO. 4711 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

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MAGANBHAI L CHAUHAN

Versus

DIVISIONAL CONTROLLER

Appearance:

MR JS BRAHMBHATT for Appellant

M/S THAKKAR ASSOC. for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE A.L.DAVE

Date of decision: 19/02/99

ORAL JUDGEMENT (Per Patel, J.)

The respondent of Special Civil Application No. 4711 of 1998 has preferred this Appeal being aggrieved by the judgment passed by learned Single Judge on 2.11.1998.

2. Short facts, as it emerges from the record, are as under :-

2.1 The appellant was a workman discharging his duties as a Conductor with the Gujarat State Road Transport Corporation [for brevity, GSRTC]. He was charge sheeted for wilful absence for a period from 6.1.1994 to 23.1.1994. The appellant came out with a case that he had some abdominal pain and fever which was certified by one Doctor, and therefore, could not attend

the duties. The Disciplinary Authority, on examination of the medical certificate found that the certificate is not reliable. It was pointed out that the certificate is not acceptable as there is a correction in the date and that the certificate was obtained after the notice was issued to him. GSRTC also pointed out before the Inquiry Officer that the Workman is well conversant with regard to the rules regarding leave and he could have conveyed the information about sickness soon after he fell sick if he was genuinely sick. The Inquiry Officer, on examination of the records, found that on 16 occasions, the appellant remained absent without prior permission and thus he was found to be a habitual absentee. The services of the appellant, were therefore, terminated. The appellant approached the Labour Court, Vadodara in Reference (LCV No. 1187/94) which passed an order of reinstatement with 50% backwages. The appellant challenged the said order by preferring SCA No. 3650/98. GSRTC challenged the order by preferring Special Civil Application No. 4711 of 1998. Learned Single Judge dismissed the petition [SCA No. 3650/98] preferred by the appellant. However, learned Single Judge allowed SCA No. 4711/98 preferred by GSRTC and quashed and set aside the award passed by the Labour Court.

3. It is required to be noted that looking to the nature of service, if the appellant was not on duty, GSRTC was unable to operate bus in charge of the appellant on a routes in the absence of the appellant, a Conductor. It was also found that in the past also, he used to remain absent and schedule was required to be cancelled for which a small amount of fine was imposed which was recovered from his salary. Learned Single Judge found that despite the misconduct in past, opportunities were repeatedly given but he did not improve. Learned Single Judge, on going through the award found that it is a case of willful absence which amounts to misconduct. When the Medical certificate indicates vaguely that he was suffering from abdominal pain and fever without giving any details and that too after the notice was given to him, the authorities did not accept the same more particularly as there was a correction in the date. The authorities found that the medical certificate is not reliable. The Labour Court was required to assign reasons while interfering with the findings of the Disciplinary Authority including that of punishment. Before the Inquiry Officer, opportunity was given to the appellant to examine witnesses. The appellant could have examined the Doctor to prove that he was sick. If the certificate was accepted by the authority on presentation, then there was no question of

holding an inquiry. Inquiry was held because the certificate was not accepted by the authorities, and therefore, it was the duty of the appellant to examine the Doctor with a view to prove that he was infact sick. At this stage, it is required to be noted that the Inquiry Officer's report clearly indicates that the appellant was found remaining absent on number of occasions and the same has been accepted by the Labour Court. The Labour Court has specifically observed, after referring to various incidents for remaining absent without leave that "this workman has a habit of remaining absent without previous leave; In case if he was sick, he does not care to convey the same to the employer; The GSRTC is for public services; If an employee does not join duty, bus service is likely to be affected on a particular route; Thus, on such responsible position if an employee remains absent without prior information, cannot be tolerated. The said act amounts to misconduct as per the Rules". Labour Court, considering the past record also recorded a finding that on 14 occasions, the workman remained absent without leave.

4. The default card is produced by this appellant with the memo of appeal. Perusing the same we find that the petitioner remained absent without prior permission on the following days:-

1. 23.04.88 to 30.04.88
2. 11.06.88 to 21.06.88
3. 01.09.89 to 03.09.89
4. 30.10.89 to 05.11.89
5. 06.12.89 to 15.12.89
6. 25.04.90 to 24.05.90
7. 03.12.90 to 07.12.90
8. 18.07.91 to 19.07.91
9. 25.11.91 to 29.11.91
10. 02.12.91 to 15.12.91
11. 21.12.91 to 23.12.91
12. 25.12.91 to 29.12.91
13. 11.03.92 to 13.03.92
14. 19.03.92 to 22.03.92
15. 26.03.92 to 14.04.92
16. 02.05.92 to 22.05.92
17. 03.12.92 to 20.12.92
18. 05.03.93 to 21.03.93
19. 25.03.93 to 05.04.93
20. 28.10.93 to 05.11.93
21. 11.11.93 to 23.11.93
22. 04.01.94 to 23.01.94
23. 01.11.92 to 17.11.92

Over and above the above instances, there are several other instances indicating that the workman has remained absent intermittently, for a day or two. The Tribunal has referred only 17 instances of not remaining present from the default card. We are not referring any other misconduct reflected in the default card. From the record it is very clear that on number of occasions appellant has remained absent without leave and appellant was found to be in habit of remaining absent without leave.

5. Despite this finding, without assigning any reasons, the Presiding Officer of the Labour Court in one sentence stated that as medical certificate is produced, benefit of doubt should go to the appellant. It is not correct approach, more particularly when the certificate is doubted. If the certificate would have been issued by the Doctor of the Corporation itself, then the matter could have been different. However as the certificate is not accepted and the defence is that the employee could not remain present because of sickness, then at least by examining the Doctor he could have proved the certificate to show that he was sick to such an extent that he was unable to attend his duties. The Labour Court also held that the concerned workman must be punished, and thereafter, without assigning any reason, the Labour Court held that it would be just and proper to reinstate the workman with 50% backwages.

6. The Labour Court, while interfering with the order of termination passed by the employer and substituting it with reinstatement with 50% backwages, was required to give reasons, which are acceptable. It is required to be noted that the Apex Court in the case of WORKMEN vs. FIRESTONE TYRE & RUBBER CO. reported in 1973 (1) SCC 813 held that if the Court gives a different finding from that of the Inquiry Officer, then the Court should give cogent reasons for deferring from the finding of Inquiry Officer. Learned Single Judge, in view of the aforesaid circumstances held that the order passed by the Labour Court being not in accordance with law, must be quashed and set aside.

7. Mr. Brahmabhatt submitted that this Court in the case of LAVJEE PUNJA vs. UNION OF INDIA reported in 1992 (1) GLH 498 has pointed out that in departmental inquiry, principles of natural justice must be followed and cryptic order or non-speaking order cannot be passed. The order must show application of mind by a disciplinary authority. The order passed by the disciplinary in the instant case is in detail. Learned advocate was not in a

position to show as to how this order is cryptic or non-speaking order. The order gives sufficient reasons for imposing the penalty and it is a well reasoned order.

8. Mr. Brahmbhatt further submitted that the appellant was sick and he would not gain anything by remaining at home, and the penalty which is imposed must be proportionate to the misconduct committed by him. Reading paragraph 18 of the judgment in the case of Lavjee Punja (supra), Mr. Brahmbhatt submitted that in that case the delinquent was not able to attend the duties and he was sick and misconduct cannot be presumed merely on remaining absent on the ground of sickness. In the said case, what is required to be noted is that the learned Single Judge has observed that even if it is held to be unauthorised, would it call for removal from service? According to the learned Single Judge, this was the vital question. In that case, the report of the inquiry officer was prepared in flagrant violation of the rules. In the instant case, we find that the inquiry is conducted by following the principles of natural justice and in compliance with the Rules. The order is a speaking order. Inquiry Officer has considered the past conduct. If this would have been a solitary incident, the question could have been examined in an altogether different manner.

9. Mr. Brahmbhatt relied on the judgment of the Apex Court in the case of UNION OF INDIA vs. GIRIRAJ SHARMA reported in AIR 1994 SC 215 and submitted that the punishment of dismissal is excessive in the instant case. That case was of overstaying the leave period by the employee subsequent to the order of rejection of application for extension of leave. The Court in such circumstances held that it cannot be said to be a wilful intention to flout the orders. It appears that employee, while admitting the fact that he had overstayed the period of leave, has explained the circumstances in which it was inevitable for him to continue to remain on leave and he was forced to do so on account of unexpected circumstances. The Court also pointed out the circumstances and indicated that it was not his intention to willfully flout the order, but the circumstances forced him to do so. The facts are different in the instant case. We have indicated earlier also that if this would have been the first incident, the Court would have dealt with it in a different manner altogether, but despite repeated opportunities being given in the instant case to the appellant, the appellant has continued to act in the same fashion.

10. In the circumstances of this case, we have absolutely no hesitation in holding that the learned Single Judge has not committed any error in passing the impugned order. In the result, this appeal is required to be dismissed, and is hereby dismissed. Notice is discharged. No order as to costs.

csm./ -----